

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SAMUEL J. HARDING,	:	
Plaintiff,	:	CASE NO. 4:10-CV-1854
v.	:	
MICHAEL J. ASTRUE,	:	OPINION & ORDER
Commissioner of Social Security,	:	[Resolving Doc. No. 27]
Defendant.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Samuel J. Harding appeals the Commissioner of Social Security's denial of Harding's Social Security disability benefits application. [[Doc. 1](#).] This Court referred the case to Magistrate Judge Kenneth McHargh under Local Rule 72.2. On January 19, 2011, Magistrate Judge McHargh issued an Order to Show Cause, requiring that Harding explain his failure to comply with the Court's initial order and file a brief on the merits. [[Doc. 22](#).] The Magistrate Judge subsequently ordered Harding to file his brief on the merits. [[Doc. 24](#).] On May 4, 2011, after Harding had failed to file his brief on the merits, Magistrate Judge McHargh issued a second Order to Show Cause. The order required Harding to explain why he had still not filed his brief. [[Doc. 26](#).]

Harding did not respond to the Order to Show Cause; nor did he file a brief on the merits. On February 16, 2011, Magistrate Judge McHargh issued a Report and Recommendation recommending that this Court dismiss Harding's complaint with prejudice. [[Doc. 27](#).] The Magistrate Judge concluded that because Harding has not responded to two Orders to Show Cause,

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never filed a brief on the merits, and has not moved for an extension of time to file the brief or shown good cause for his tardiness, the case should be dismissed for failure to prosecute. [*Id.* at 2 (citing Fed. R. Civ. P. 41(b) and Link v. Wabash R.R. Co., 370 U.S. 626, 629-31 (1962) for the proposition that a case may be dismissed for failure to prosecute or comply with a court order).]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. 28 U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within fourteen days of service. *Id.* Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. FED. R. CIV. P. 72(a); *see also Thomas v. Arn, 474 U.S. 140, 145 (1985)*; United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the Magistrate's report without review. *See Thomas, 474 U.S. at 149*.

In this case, neither either party has objected to the Magistrate Judge's Report and Recommendation. Moreover, having conducted its own review of the record, the Court agrees with the conclusions of the Magistrate Judge. Harding has not complied with either Order to Show Cause and has never filed a brief on the merits. Accordingly, the Court **ADOPTS** in whole Magistrate Judge McHargh's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **DISMISSES** Plaintiff Harding's complaint with prejudice for failure to prosecute.

IT IS SO ORDERED.

Dated: June 13, 2011

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE